



[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2011-0183]

### Access to Aircraft Situation Display to Industry (ASDI) and National Airspace System Status Information (NASSI) Data

**AGENCY:** Federal Aviation Administration (FAA)

**ACTION:** Final Notice of the Process for Limiting Aircraft Data Displayed Via ASDI

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**SUMMARY:** In a proposal published on May 9, 2012, the FAA tentatively identified a process through which aircraft owners and operators could ask the FAA to limit the agency's dissemination of their aircraft data via the FAA's ASDI program.<sup>1</sup> The FAA noted that its final decision on the policy will replace the interim policy to which the FAA has adhered since publishing it on December 16, 2011.<sup>2</sup> After considering each of the comments submitted to the public docket in response to the proposal, the FAA is issuing this final policy with respect to the dissemination of aircraft data via ASDI.

If you wish to review the background documents or the comments received in this matter, you may go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12-140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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<sup>1</sup> 77 Fed. Reg. 27,269 (May 9, 2012).

<sup>2</sup> 76 Fed. Reg. 78,328 (Dec. 16, 2011).

**DATE:** The procedures described in this document will take effect on [insert date 30 days after the date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** You may direct any questions about adding aircraft to and removing aircraft from the ASDI block list to Mr. Damon Thomas by telephone at (202) 267-5300 or by electronic mail at [ASDIBlock@faa.gov](mailto:ASDIBlock@faa.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background

On November 18, 2011, the President signed into law H.R. 2112, the “Consolidated and Further Continuing Appropriations Act, 2012,” which provided the U.S. Department of Transportation’s appropriation for the balance of fiscal year 2012. Section 119A of that statute provided that:

[n]otwithstanding any other provision of law, none of the funds made available under this Act or any prior Act may be used to implement or to continue to implement any limitation on the ability of any owner or operator of a private aircraft to obtain, upon a request to the Administrator of the [FAA], a blocking of that owner’s or operator’s aircraft registration number from any display of the [FAA’s ASDI and NASSI] data that is made available to the public, except data made available to a Government agency, for the noncommercial flights of that owner or operator.<sup>3</sup>

In light of this appropriation language, the FAA withdrew a prior policy that it published on June 3, 2011, which required owners or operators to submit a Certified Security Concern in order to have their aircraft blocked from the public’s view on displays of ASDI and NASSI information. In connection with its withdrawal of the June 3 policy, the FAA published interim procedures by which the owners and operators of aircraft could request that the FAA block information about the operations of their

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<sup>3</sup> Pub. L. No. 112-55, § 119A, 125 Stat. 552, 649.

aircraft from release to the public via the FAA's ASDI data feed.<sup>4</sup> At that time, the FAA noted that it would propose more detailed procedures for the ASDI blocking program and solicit public comment on the proposal. The FAA published the FAA's proposed procedures on May 9, 2012.<sup>5</sup> The FAA now summarizes and evaluates the written comments submitted to the public docket in this matter and sets forth the FAA's final decision on its policy related to the blocking of aircraft flight data from the ASDI data feed. In a separate action, the FAA will amend its memoranda of agreement with the subscribers who receive the information to clarify the subscriber responsibilities, consistent with the procedures described here.

## II. Summary and Analysis of the Comments

The FAA received eight written comments on the FAA's proposed procedures. Out of the eight commenters, two are generically opposed to blocking aircraft information from the ASDI and NASSI data, and three are generically in favor of the ASDI aircraft blocking program. The three remaining commenters question certain aspects of the program and the FAA's proposal.

The FAA cannot accommodate the two commenters who oppose the blocking of aircraft information from the FAA's ASDI and NASSI data feed. The appropriations provision quoted above clearly precluded the use of appropriated funds to implement or to carry out any limitation on blocking from any display of the FAA's public data feed, on owner or operator request, the aircraft registration number of an aircraft conducting a noncommercial flight. In the absence of appropriated funds, the FAA cannot implement

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<sup>4</sup> 76 Fed. Reg. at 78,328.

<sup>5</sup> 77 Fed. Reg. at 27,269-71.

a policy or program that would limit owner or operator ability to block the specified aircraft from the FAA's data feed.

With respect to the commenters who raised questions with respect to the FAA program, an anonymous commenter questions the need and effectiveness of the option to request the blocking of aircraft data at the ASDI subscriber level. This commenter suggests that the convenience of allowing an intermediate level of blocking at the ASDI subscriber level could be counterbalanced by the potential harm from the inadvertent release of ASDI and NASSI data at that level.

In the FAA's notice inviting these comments, the FAA explained the rationale for the ASDI program's two levels of aircraft blocking.<sup>6</sup> In summary, given the technology and the processes in place when the FAA established the ASDI program in 1997, some aircraft owners who desired to track their own blocked aircraft needed to contract with an ASDI subscriber to get that information, because there was no way for them to see the data if it were blocked at the FAA level. The option of requesting aircraft blocking at the ASDI subscriber level remains necessary for this purpose today, and the FAA will retain it. However, the commenter is correct to the extent that the FAA systems that convey aircraft data in the United States are changing rapidly. As a result, the FAA expects to update its data sharing policy as it continues to develop and deploy future systems that handle aircraft operational data.

The National Business Aviation Association (NBAA) inquires about the manner in which the FAA expects to protect blocked aircraft data from subscribers' intentional or inadvertent release. The FAA's agreement with subscribers requires each subscriber to demonstrate to the FAA's satisfaction the subscriber's ability to block selectively the

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<sup>6</sup> *Id.*, at 27,270.

display of any data related to any identified aircraft. In addition, the agreement has historically required ASDI data subscribers to honor the privacy and security interests of airspace system users under the legacy ASDI blocking program. In the notice announcing the FAA's interim policy, the FAA specified that it construes the current agreement to obligate ASDI subscribers to filter any aircraft data at the FAA's direction.<sup>7</sup> The potential remedy for a subscriber's failure to honor the privacy and security interests of system users has been the FAA's immediate termination of the agreement with that subscriber. This remedy has proven adequate. If any member of the public identifies an aircraft that should be blocked, yet continues to appear in the information that an ASDI subscriber releases, he or she can report the matter to FAA's ASDI program staff by the means identified in the "For Further Information Contact" section of this document.

NBAA also asks the FAA to identify clearly a process for removing aircraft from the ASDI block list. The FAA's May 2012 proposal states that the FAA was proposing that it would use the same process for adding as well as removing aircraft from the ASDI block list.<sup>8</sup> For example, in detailing the proposed substance of owner/operator requests, the FAA noted that the completeness of the information submitted could influence the FAA's ability to "add or delete aircraft from the ASDI block list . . . ."<sup>9</sup> In addition, the information that the FAA proposed for submission included "[t]he registration number(s) of the aircraft to be blocked or unblocked . . . ."<sup>10</sup> The FAA does not perceive that using an identical process to block and to unblock aircraft will be confusing or problematic for requestors, and the FAA will adopt that approach.

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<sup>7</sup> 76 Fed. Reg. at 78,328.

<sup>8</sup> 77 Fed. Reg. at 27,269-70.

<sup>9</sup> *Id.*, at 27,269.

<sup>10</sup> *Id.*

NBAA additionally suggests that the FAA should permit associations to consolidate and forward aircraft blocking and unblocking requests to the FAA. In the FAA's May 2012 proposal, the FAA tentatively determined that requests to block aircraft must come to the FAA from aircraft owners, aircraft operators, or their legally authorized agent and not from associations acting on their behalf. The FAA will adhere to this requirement. In proposing a minimum legal relationship between an ASDI block requestor and the aircraft owner or operator, the FAA determined that the requestor, if he or she is not the actual owner or operator, should have a fiduciary duty to adhere to the owner's or operator's express wishes. This is intended to ensure that the requestor has a legal duty to carry out promptly the owner's or operator's request, and the FAA expects this to result in a very close correlation between owner/operator preference and the composition of the ASDI block list. The FAA continues to believe that the threshold identified in the proposal is appropriate and will promote the ASDI block list's ongoing accuracy.

NBAA further notes that the FAA's proposal does not specify a type of documentation that the FAA needs in order to process a request related to aircraft blocking. The FAA did not prescribe a specific form for blocking and unblocking aircraft principally because the FAA intends this process to be as simple as possible; the FAA does not want to suggest that a particular form is necessary to effect the requesting owner's or operator's wishes. The FAA proposed the minimum amount of information that the FAA expects the program will need to process the request.<sup>11</sup> Elaborating slightly on the FAA's proposal, the FAA will be best equipped to process the request promptly if the request includes:

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<sup>11</sup> *Id.*, at 27,269-70.

- the name of the requestor;
- the registration number(s) of the aircraft to be blocked or unblocked;
- a certification that the requestor is the owner or operator of the specified aircraft or is a legally authorized representative of the aircraft owner or operator;
- a telephone number or electronic mail address to which the FAA can direct any questions about the request; and
- for a request to block one or more aircraft, a statement indicating the requestor's desired level of ASDI blocking--either at the FAA source or at the ASDI subscriber level.

The request must be in writing and delivered either to the designated electronic mail address or to the designated regular mailing address for the ASDI blocking program.

An anonymous commenter asks the FAA to clarify the uses that ASDI subscribers can make of the ASDI data feed. The commenter states that the FAA should permit ASDI subscribers to pass along to "aviation community" users ASDI and NASSI near real time data that is further filtered only to protect basic privacy considerations. The commenter does not consider the aviation community user to correspond to the general public, instead defining the aviation community to include, for example, corporate aircraft operators and fixed base operators and perhaps also including all businesses and commercial entities providing air transportation related services. The commenter also asks that the FAA place no restriction on subscribers' retransmission of historical flight data, including the past operations of aircraft on the ASDI block list.

The permissible uses of ASDI and NASSI data that are subject to subscriber-level blocking is technically a concern that is separate from the present discussion. The notice

underlying this matter was limited to the procedures by which aircraft owners and operators can request that the FAA block their aircraft from the ASDI data feed.<sup>12</sup> By contrast, the responsibilities of ASDI subscribers with respect to handling ASDI and NASSI data that is designated as blocked at the subscriber level are contained in the FAA's contractual memorandum of agreement with ASDI subscribers. In an effort that parallels the current procedural policy discussion, the FAA is reviewing its memoranda of agreement to ensure that they comport with the FAA's current overall data sharing policy. The FAA will communicate separately with ASDI subscribers in connection with that effort.

Nevertheless, the FAA notes potential pitfalls that could accompany the recommendations of the anonymous commenter. For example, the commenter's definition of an aviation community user could include the flight department of a company that is interested in the aircraft movements of a competitor's aircraft. This could presumably thwart a reason that the competing airspace user sought ASDI blocking in the first place. In addition, the FAA has not previously agreed that ASDI subscribers can display the historical movements of blocked aircraft. Aside from the absence of a clear line as to when such data becomes historical, the FAA did not propose to permit ASDI subscribers to retransmit the historical movements of blocked aircraft, and the commenter's suggestion therefore falls outside the scope of the proposal.

### III. Conclusions

With respect to the procedures for aircraft owner and operator requests to block and unblock aircraft from inclusion in the FAA's ASDI data feed, the FAA concludes as follows:

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<sup>12</sup> *Id.*



1. *Requestors.* The FAA will honor each written request of an aircraft owner and operator, submitted in accordance with paragraphs 2 and 3 to block or unblock their aircraft's appearance in the FAA's public ASDI data feed. Aircraft owners and operators may submit their request on their own behalf, or they may do so through a legally authorized agent, including an attorney or an aircraft management company with a fiduciary duty to carry out the owner's or operator's express wishes with respect to the aircraft.

2. *Substance of Requests.* To assist the FAA in processing aircraft owner or operator requests promptly, all requests related to an aircraft's ASDI blocking or unblocking must include the following information:

- the name of the requestor;
- the registration number(s) of the aircraft to be blocked or unblocked;
- a certification that the requestor is the owner or operator of the specified aircraft or is a legally authorized representative of the aircraft owner or operator;
- a telephone number or electronic mail address to which the FAA can direct any questions about the request; and
- for a request to block one or more aircraft, a statement indicating the requestor's desired level of ASDI blocking--either at the FAA source or at the ASDI subscriber level.

3. *Addresses.* The FAA's primary electronic mailbox for all aircraft blocking and unblocking requests and for related inquiries directed to the ASDI blocking program is [ASDIBlock@faa.gov](mailto:ASDIBlock@faa.gov). The FAA also will accept aircraft block and unblock requests submitted by regular mail at: FAA ASDI Blocking Request; ATO System Operation

Services, AJR-0; Wilbur Wright Building, Room 3E1500; 600 Independence Avenue, SW; Washington, DC 20597.

4. *FAA Monthly Implementation.* The FAA implements the ASDI block list updates on the first Thursday of each month. As a result, requests that the FAA receives on or before the 15<sup>th</sup> of the preceding month are likely to be processed in time to take effect in the month after the FAA receives them. However, it is possible that the volume of requests in a given month, a requestor's timeliness, or issues with the completeness and accuracy of the information that the FAA receives could preclude the FAA from processing some requests in time for them to take effect in the month following their submission. In that event, the FAA will process all requests in the order in which the FAA receives them, to the extent that it is possible.

5. *FAA Treatment of Aircraft That Are Currently Blocked.* Any aircraft that is currently on the ASDI block list, either by virtue of a certified security concern submitted after June 3, 2011, or a request submitted under the FAA's interim ASDI block policy, will remain indefinitely on the ASDI block list when the policies in this document take effect. It is not necessary for the owners or operators of these aircraft to resubmit their requests, unless they wish to change the blocking status of their aircraft or amend the level at which their aircraft is blocked.

Issued in Washington, DC, on August 14, 2013 .

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J. David Grizzle  
Chief Operating Officer, ATO

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